

Remarks

This is in response to the non-final Office Action mailed on December 17, 2004. In the Office Action, claims 25, 26, and 41-43 were rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-26 of U.S. Patent No. 6,709,186 (the '186 patent). This rejection is respectfully traversed, and reconsideration is respectfully requested for at least the following reasons.

Preliminarily, it is noted that the present application is a division of the '186 patent.

Claims 25, 26, and 41-43 of the present application, all method claims, were originally presented at the time of filing of the parent application that matured into the '186 patent. An Office Action mailed on June 24, 2003 during the prosecution of the '186 patent included a restriction under 35 U.S.C. § 121 between Group I (including apparatus claims 1-24 and 27-40) and Group II (including method claims 25, 26, and 41-43). An Amendment filed on August 20, 2003 in response to this Office Action included an election of apparatus claims 1-24 and 27-40 of Group I, and method claims 25, 26, and 41-43 of Group II were canceled.

The present divisional application was filed as a result of the restriction requirement and includes method claims 25, 26, and 41-43 that were restricted from the application that matured into the '186 patent.

It is therefore respectfully suggested that a double patenting rejection is prohibited under 35 U.S.C. § 121 in the present divisional application because the pending claims are the claims that were restricted out of the parent application that matured into the '186 patent. See also M.P.E.P. 804.01 ("The third sentence of 35 U.S.C. 121 prohibits the use of a patent issuing on an application with respect to which a requirement for restriction has been made, or on an application filed as a result of such a requirement, as a reference against any divisional application. . .").

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FROM-Merchant & Gould

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Favorable reconsideration is respectfully requested for these reasons. The Examiner is encouraged to contact the undersigned attorney with any questions regarding this application.

Respectfully submitted,
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